

MCGOVERN LEGAL SERVICES, LLC  
BY: WILLIAM H. BROSHA, ESQ.  
850 CAROLIER LANE  
NORTH BRUNSWICK, NEW JERSEY 08902  
(732) 246-1221

ATTORNEYS FOR LAKEVIEW HOMEOWNERS ASSOCIATION, INC.

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
IN PROCEEDINGS UNDER CHAPTER 13  
OF THE BANKRUPTCY CODE

In re:

DESMOND A. HICKS CASE NO.: 18-24251 JNP

Debtor.

**BRIEF IN SUPPORT OF MOTION FOR  
STAY RELIEF**

HEARING DATE: July 7, 2020  
HEARING TIME: 11:00 A.M.

ORAL ARGUMENT WAIVED UNLESS OPPOSITION IS FILED

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**STATEMENT OF FACTS**

McGovern Legal Services, LLC represents Lakeview Homeowners Association, Inc. (the "Association") in the above-captioned matter. Desmond Hicks (the "Debtor") owns real property within the Association commonly known as 6 Point View Court, Sicklerville, New Jersey 08081 (the "Unit"). Since filing her Chapter 13 Bankruptcy Petition, the Debtor has failed to pay all of her required monthly assessments and fees. The Debtor owes the Association \$3,531.88 in post-petition arrearages in monthly maintenance assessments, late fees and attorney's fees and costs related to this default through May 28, 2020.

**STATEMENT OF RELIEF REQUESTED**

The Association requests that this Court grant the Association relief from the automatic stay.

## **LEGAL ARGUMENT**

### **I. The Association's Motion For Stay Relief Should Be Granted Because Debtor Has Failed To Remit Post-Petition Payments To The Association.**

The debt owed to the Association is so unique and important that in many cases, it is deemed non-dischargeable. See, 11 U.S.C.A. § 523(a)(16). The Association is a non-profit corporation that operates the common property. Its only source of income is payment by each homeowner of their proportionate share of the Association's expenses. If a homeowner does not pay, either the Association does not have the funds necessary to maintain the common property or the other homeowners in the community must pay the shortfall caused by the delinquency.

In order to facilitate the peaceful and harmonious coexistence of its homeowners, all residents of the Association are also required to adhere to certain rules, regulations and obligations, which are described in the Governing Documents. The Association is empowered, through its Governing Documents and the New Jersey Condominium Act, N.J.S.A. §46:8B-15(f) to require unit owners to pay monthly maintenance assessments, special assessments, late fees, fines and attorneys' fees associated with collections.

Despite demand, the Debtor has failed to make common expense payments to the Association as required by the terms of the By-Laws and Master Deed. Pursuant to 11 U.S.C.A. §362(d) the Court shall grant relief from the automatic stay for cause. Here, the Debtor has failed to remit required post-petition payments to the Association. Section 523(a)(16) provides that an individual debtor is not discharged for "a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a unit that has condominium ownership." Debtor holds title to a unit that has condominium ownership. Therefore, the Debtor is obligated to pay the Association these post-petition accruals. The Debtor has not paid these post-petition accruals and therefore has violated the

Bankruptcy Code.

It is highly prejudicial for the Debtor to own a unit in the Association without paying the required, commonly monthly payments. It is highly prejudicial if the Debtor does not comply with the Governing Documents. The Debtor is abusing the Bankruptcy code at the Association's peril. Due to Debtor's non-payment of post-petition fees and assessments, the Association requests that the Court grant the Association's motion for relief from the automatic stay.

**II. The Association is entitled to Stay Relief.**

The Association seeks relief from the automatic stay to pursue a foreclosure. Debtor's failure to pay post-petition accruals constitutes cause for stay relief. See, 11 U.S.C.A. § 362(d), 11 U.S.C.A. § 1301(d) and 11 U.S.C.A. § 105. Therefore, the Court should grant the Association stay relief so that it may pursue its foreclosure action despite this bankruptcy.

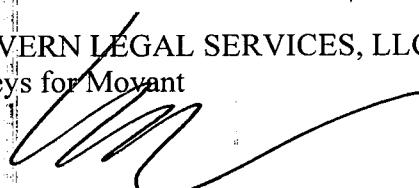
The continual accrual of post-petition sums without payment in full irreparably harms the Association and its members. As stated above, if a homeowner does not pay, either the Association does not have the funds necessary to maintain the common property or the other homeowners in the community must pay the shortfall caused by the delinquency. Dismissal of this case will not provide an adequate remedy or protection to the Association. Dismissal will effectively provide the Debtor with the opportunity to file another bankruptcy and obtain a new "order for relief" allowing Debtors to circumvent Bankruptcy Code Section 523(a)(16). Such action is not appropriate. It irreparably harms the Association and denies the Association adequate protection. Therefore, the Association requests that the Court grant the Association stay relief.

**CONCLUSION**

Due to Debtor's failure to pay post-petition fee accruals, the Association requests that this Court grant the Association relief from the automatic stay to pursue foreclosure of real property in the Association.

McGOVERN LEGAL SERVICES, LLC,  
Attorneys for Movant

By: \_\_\_\_\_

  
William H. Brosha, Esq.  
An Attorney of the Firm

Dated: 6/15/20

**McGovern Legal Services, LLC**  
**William H. Brosha, Esq.**  
**850 Carolier Lane**  
**North Brunswick, NJ 08902**  
**Phone (732) 246-1221**  
**Fax (732) 246-1872**

**ATTORNEYS FOR LAKEVIEW HOMEOWNERS ASSOCIATION, INC.**

In re:

**DESMOND A. HICKS**

Debtor.

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
IN PROCEEDINGS UNDER CHAPTER 13  
OF THE BANKRUPTCY CODE

CASE NO.: 18-24251-JNP

**NOTICE OF MOTION FOR STAY RELIEF**

HEARING DATE: July 7, 2020  
HEARING TIME: 11:00 AM

**ORAL ARGUMENT WAIVED UNLESS  
OPPOSITION IS FILED**

TO: **THOSE LISTED ON ANNEXED SERVICE LIST**

**PLEASE TAKE NOTICE** that on the 7th day of July 2020 at 11:00 a.m. or as soon thereafter as counsel may be heard, the undersigned attorneys for Creditor, Lakeview Homeowners Association, Inc., (the "Association"), by and through its counsel, McGovern Legal Services, LLC, will move before the Honorable Jerrold N. Poslusny, U.S.B.J. at the United States Bankruptcy Court for the District of New Jersey, located at 400 Cooper Street, 4<sup>th</sup> Floor, Camden, New Jersey 08101 for an Order:

Terminating the automatic stay with respect to the Association so that the Association may, among other things, pursue its rights with respect to the Debtor's real property to the extent and in the manner provided by any applicable Association Governing Documents, contract

documents and non-bankruptcy law despite the pendency of this proceeding.

**Property:** Debtor's Real Property including, but not limited to:

6 Point View Court  
Sicklerville, New Jersey 08081

This motion is based upon the annexed brief, certifications and exhibits thereto, oral argument of counsel (if opposed), testimony and such other evidence as may be adduced at the time of the hearing (if opposed).

Oral argument is waived unless opposition is timely filed.

A Proposed form of Order is submitted herewith.

Dated: 6/15/20

McGOVERN LEGAL SERVICES, LLC,  
Attorneys for Movant

By:   
WILLIAM H. BROSHA, ESQ.  
An Attorney of the Firm

**CERTIFICATION OF SERVICE**

I, William H. Brosha, do certify that a true copy of the Motion for Stay Relief was served upon those individuals and/or entities listed on the attached service list via electronic service on the dates listed below.

Dated:

BY:

  
WILLIAM H. BROSHA, ESQ.

**SERVICE LIST**

**Via Electronic Service on**

CLERK, UNITED STATES BANKRUPTCY COURT  
402 East State Street  
Trenton, NJ 08608  
Telephone: 609-989-2200

Desmond A. Hicks c/o  
Terry Glen Tucker, P.C.  
80 West Broad Street  
Bridgeton, New Jersey 08302

TRUSTEE  
Isabel C. Balboa  
Cherry Tree Corporate Center  
535 Route 38 – Suite 580  
Cherry Hill, New Jersey 08002

U.S. TRUSTEE  
US Dept of Justice  
Office of the US Trustee  
One Newark Center Ste 2100  
Newark, NJ 07102

**McGOVERN LEGAL SERVICES, LLC  
BY: MICHAEL R. POLULAK, ESQUIRE  
850 CAROLIER LANE  
NORTH BRUNSWICK, NEW JERSEY 08902  
(732) 246-1221**

**ATTORNEYS FOR LAKEVIEW HOMEOWNERS ASSOCIATION, INC.**

In re:

**DESMOND A. HICKS**

Debtor.

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
IN PROCEEDINGS UNDER CHAPTER 13  
OF THE BANKRUPTCY CODE**

**CASE NO.: 18-24251-JNP**

**CREDITOR'S CERTIFICATION OF  
DEFAULT**

I, Thomas Scull, of full age, certify and say:

1. I am the Property Manager for Creditor, Lakeview Homeowners Association, Inc. (the "Association"), and, as such, I have knowledge of the amount due the Association from the Debtor. I am authorized to make this Certification and do so based upon my personal knowledge and review of the books and records of the Association.
2. Desmond A. Hicks (the "Debtor") owns real property in the Association commonly known as 6 Point View Court, Sicklerville, New Jersey 08081 (the "Unit").
3. The Debtor has not paid all post-petition monthly assessments, special assessments, late fees, fines or attorneys' fees related to this default since filing bankruptcy. Attached hereto is a true and accurate copy of the Debtor's post-petition account history.

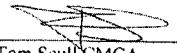
The post-petition sum being sought in this application is detailed below:

Maintenance Fees (9/30/2018 – 5/28/2020):	\$898.00
Late Fees (9/30/2018 – 5/28/2020):	\$20.00
Legal (only work related to post-petition)	
Default 4/2019 -5/28/2020)	\$2,614.00
<u>Credits</u>	<u>-\$12</u>
<b>Total:</b>	<b>\$3,531.88</b>

4. This certification is being made in an effort to vacate the stay.
5. I certify the above facts to be true. I am aware that if the above facts are willfully false, I am subject to punishment.

Dated: 05/28/2020

Reviewed & Approved by:

  
Tom Scull CMCA  
Community Manager

Thomas Scull, Property Manager

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY  
**Caption in Compliance with D.N.J. LBR 9004-2(c)**

McGovern Legal Services, LLC  
Marlena S. Diaz-Cobo, Esq.  
850 Carolier Lane  
North Brunswick, NJ 08902  
Phone (732) 246-1221  
Attorneys for Lakeview Homeowners Association,  
Inc.

In Re:

DESMOND A. HICKS

Case No.: 18-324251  
Chapter: 13  
Adv. No.:  
Hearing Date: July 7, 2020  
Judge: JNP

**CERTIFICATION OF SERVICE**

1. I, Cathy Carbonaro :

- represent the \_\_\_\_\_ in the above-captioned matter.  
 am the secretary/paralegal for Creditor, Condo Ass'n, who represents the \_\_\_\_\_ in the above captioned matter.  
 am the \_\_\_\_\_ in the above case and am representing myself.

2. On \_\_\_\_\_, I sent a copy of the following pleadings and/or documents to the parties listed in the chart below:

Motion for Stay Relief

3. I hereby certify under penalty of perjury that the above documents were sent using the mode of service indicated.

Dated: \_\_\_\_\_

Signature

Name and Address of Party Served	Relationship of Party to the Case	Mode of Service
Desmond A. Hicks 6 View Point Court Sicklerville, New Jersey 08081	Debtor	<input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input checked="" type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)
Desmond A. Hicks c/o Terry Glen Tucker, P.C. 80 West Broad Street Bridgeton, New Jersey 08302	Debtor's Attorney	<input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)
Isabel C. Balboa Cherry Tree Corporate Center 535 Route 38 – Suite 580 Cherry Hill, New Jersey 08002	Trustee	<input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)
U.S. TRUSTEE US Dept of Justice Office of the US Trustee One Newark Center Ste 2100 Newark, NJ 07102	US Trustee	<input type="checkbox"/> Hand-delivered <input checked="" type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input checked="" type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)

Name and Address of Party Served	Relationship of Party to the Case	Mode of Service
		<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)
		<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)
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		<input type="checkbox"/> Hand-delivered <input type="checkbox"/> Regular mail <input type="checkbox"/> Certified mail/RR <input type="checkbox"/> E-mail <input type="checkbox"/> Notice of Electronic Filing (NEF) <input type="checkbox"/> Other _____ (as authorized by the court *)

\* May account for service by fax or other means as authorized by the court through the issuance of an Order Shortening Time.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

McGovern Legal Services, LLC  
Marlena S. Diaz-Cobo, Esq. (MM-4524)  
850 Carolier Lane  
North Brunswick, NJ 08902  
Phone (732) 246-1221  
Attorneys for Lakeview Homeowners Association,  
Inc.

In Re:  
**DESMOND A. HICKS**

Case No.: 18-24251

Hearing Date: July 7, 2020

Judge: JNP

Chapter: 13

Recommended Local Form:  Followed  Modified

**ORDER VACATING STAY**

The relief set forth on the following page is hereby **ORDERED**.

Upon the motion of Lakeview Homeowners Association, Inc., under Bankruptcy Code section 362(a) for relief from the automatic stay as to certain property as hereinafter set forth, and for cause shown, it is

ORDERED that the automatic stay is vacated to permit the movant to institute or resume and prosecute to conclusion one or more actions in the court(s) of appropriate jurisdiction to pursue the movant's rights in the following:

Real property more fully described as:

6 View Point Court  
Sicklerville, New Jersey 08081

Personal property more fully described as:

The Association may suspend membership rights and privileges

It is further ORDERED that the movant may join the debtor and any trustee appointed in this case as defendants in its action(s) irrespective of any conversion to any other chapter of the Bankruptcy Code.

The movant shall serve this order on the debtor, any trustee and any other party who entered an appearance on the motion.

**Account History Report****Lakeview HOA (LACTC)****Desmond Hicks (Post)**

00156-5340

Community Address:	6 Point View Ct Sicklerville, NJ 08081	Date Settled:	Mon Jul 16, 2018
		Unit Type:	01 - Unit Type 01 (\$120.00)
Mailing Address:	6 Point View Ct Sicklerville, NJ 08081	Last payment date:	
		Last payment amount:	0.00
		Current balance:	2,807.86

Trans Date	Transaction	Charges	Payments	Balance	Reference	Comments
06/14/2019	Resident Assessment	110.00		110.00	Quarterly Charges	10/1/18 Moved from 1054835
06/14/2019	Resident Assessment	125.00		235.00	Quarterly Charges	1/1/19 Moved from 1054835
06/14/2019	Resident Assessment	125.00		360.00	Quarterly Charges	4/1/19 Moved from 1054835
06/14/2019	Late Fee	10.00		370.00	BK 7/16/18	9/2018 Moved from 1054835
06/14/2019	Late Fee	10.00		380.00	BK 7/16/18	12/2018 Moved from 1054835
06/14/2019	Late Fee	10.00		390.00	BK 7/16/18	2/2019 Moved from 1054835
06/14/2019	Late Fee	10.00		400.00	BK 7/16/18	4/2019 Moved from 1054835
06/14/2019	Legal Fee	54.00		454.00	BK 7/16/18	Inv 118451 Moved from 1054835
06/14/2019	Legal Fee	715.00		1,169.00	BK 7/16/18	Inv 12219 Moved from 1054835
06/14/2019	Legal Fee	573.19		1,742.19	BK 7/16/18	Inv 123654 Moved from 1054835
06/14/2019	Legal Fee	40.50		1,782.69	BK 7/16/18	Inv 128799 Moved from 1054835
06/14/2019	Misapplied Payment		-77.10	1,705.59	LB 2018964	Moved from 1054835
06/14/2019	Misapplied Payment		-70.91	1,634.68	LB 2024683	Moved from 1054835
06/14/2019	Misapplied Payment		-70.91	1,563.77	LB 2027622	Moved from 1054835
06/14/2019	Misapplied Payment		-70.79	1,492.98	LB 2033672	Moved from 1054835
07/01/2019	Resident Assessment	125.00		1,617.98	Quarterly Charges	Recurring Charges: 07/01/2019
08/09/2019	Delinq Proc Fee - Assn	5.00		1,622.98	Collection Notice	Processing Fee
09/05/2019	Delinq Proc Fee - Assn	5.00		1,627.98	Collection Notice Ce	Processing Fee
09/30/2019	Late Fee	10.00		1,637.98	Late Fee	Late Fee: 09/30/2019
10/01/2019	Resident Assessment	125.00		1,762.98	Quarterly Charges	Recurring Charges: 10/01/2019
10/30/2019	Misapplied Payment		-0.12	1,762.86	LB2027622	Moved Fr 1054835 HS2573703
11/17/2019	Legal Fee	200.00		1,962.86	July/Aug/Sept. 2019	McGovern Inv. 137951
11/25/2019	Late Fee		-10.00	1,952.86	Credit	Reverse 06/14/2019 Late Fee
11/25/2019	Late Fee		-10.00	1,942.86	Credit	Reverse 09/30/2019 Late Fee

**Account History Report****Lakeview HOA (LACTC)****Desmond Hicks (Post)**

00156-5340

Trans Date	Transaction	Charges	Payments	Balance	Reference	Comments
11/25/2019	Late Fee		-10.00	1,932.86	Credit	Reverse 06/14/2019 Late Fee
11/25/2019	Late Fee		-10.00	1,922.86	Credit	Reverse 06/14/2019 Late Fee
11/25/2019	Late Fee		-10.00	1,912.86	Credit	Reverse 06/14/2019 Late Fee
12/31/2019	Late Fee	10.00		1,922.86	Late Fee	Late Fee: 12/31/2019
01/01/2020	Resident Assessment	144.00		2,066.86	Quarterly Charges	Recurring Charges: 01/01/2020
01/16/2020	Legal Fee	144.50		2,211.36	Legal Fee	Nov Legal Inv # 140472
02/29/2020	Late Fee	10.00		2,221.36	Late Fee	Late Fee: 02/29/2020
03/30/2020	Legal Fee	267.50		2,488.86	Jan 2020 Legal Fee	McG inv #142835
04/01/2020	Resident Assessment	144.00		2,632.86	Quarterly Charges	Recurring Charges: 04/01/2020
04/20/2020	Legal Fee	175.00		2,807.86	March 2020 Legal Fee	McG invoice #145257
	Move Legal to pre pet balance	-\$54.00 -\$715.00 -\$573.19				
	McGovern Legal Services, LLC legal not posted	\$289.71				
		\$940.00				
	Motion Fee		\$181.00			
	Remove Mangement fees	-\$10.00				
	McGovern Legal Services, LLC work in progress	\$665.50				
				\$3,531.88		